

EXHIBIT 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES BENBOW,

Plaintiff,

-against- Civ. No.: 17-CV-6457(EK) (LB)

CITY OF NEW YORK; POLICE OFFICER BRIAN W.
FEELY; POLICE OFFICER MATTHEW J. ROSIELLO;
POLICE OFFICER KENNETH L. ANDERSON; SERGEANT
WILLIAM A. DAIB; POLICE OFFICER SHANIEL J.
MITCHELL; and POLICE OFFICER STEPHEN J.
MINUCCI,

Defendants.

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VIDEOCONFERENCE VIA ZOOM
Conducted by:
LEX REPORTING SERVICE, INC.
160 Broadway
New York, New York

October 14, 2020
9:41 a.m.

DEPOSITION of POLICE OFFICER SHANEIL A.

MITCHELL, named herein as **POLICE OFFICER**

SHANIEL J. MITCHELL, a Defendant in the

above-entitled action, held remotely via Zoom

videoconference, pursuant to Order, taken

before Tania C. Pedrosa, a shorthand reporter

and Notary Public within and for the State of

New York.

LEX #159616-A



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2 process consists of?

3 A You -- we shoot at the indoor
4 range or the outdoor range from a distance as
5 far as 25 meters and as close to 7 meters, 50
6 rounds, and you have to score over a 75 --

7 Q Okay.

8 A -- to pass.

9 Q Okay. So you have to hit a
10 target from -- between 25 meters or yards?

11 A Yards. I'm sorry. Yards.

12 Q So 25 yards away you have to hit
13 a target and you have to hit the target
14 75 percent of the time; is that correct?

15 A Yes.

16 Q Okay. And when you shoot, you're
17 aim -- you're taught to aim for center mass,
18 correct?

19 A Yes.

20 Q Can you explain to me what center
21 mass is?

22 A Center mass is pretty much the
23 center of the body from the neck to the
24 waistline.

25 Q Okay. That's if they're facing

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2 you, it would be from the neck --

3 A Yes.

4 Q -- to the waistline is the --

5 A Yes.

6 Q -- center mass, correct?

7 A Yes.

8 Q Okay. And if someone is behind
9 -- their back is to you, center mass would be
10 essentially from the top of their neck to
11 their back, correct?

12 A Yes.

13 Q And you testified that you have
14 to hit the target 75 percent of the time in
15 order to qualify for your weapon, correct?

16 A Yes.

17 Q And this process happens, you
18 know, at least twice a year, correct?

19 A Yes.

20 Q Is it every six months or some
21 other variation?

22 A It might -- it -- it all depends.

23 Q When was the last time you
24 qualified for your weapon?

25 A I qualified a month or two ago.

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deadly force?

A When there's a threat or a danger to themselves or the public.

Q Okay. You've made previous arrests for individuals with guns, correct?

A Yes.

Q Okay. Just because someone has a gun, it doesn't mean that they're supposed to get shot, correct?

MR. WEINER: Objection.

You can answer if you understand the question.

A No.

Q That's not correct or that is correct?

A No, that is correct.

Q Okay. Thank you. And you've made plenty of gun arrests without having to shoot the individual, correct?

A Yes.

Q And you've made gun arrests even when individuals have displayed a weapon or carried it openly, correct?

MR. WEINER: Objection.

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2 A Excuse me. I didn't hear you.

3 Q Okay. Do you agree with me that
4 throughout the execution of your job
5 functions, you have to make determinations
6 regarding probable cause?

7 A Yes.

8 Q And you have to do that on a
9 regular basis as an officer, correct?

10 A Yes.

11 Q And would you also agree with me
12 that throughout the execution of your job
13 functions, you have to make decisions
14 regarding use of force?

15 A Yes.

16 Q And that you -- as an officer,
17 you have to make that decision on pretty much
18 a daily basis whether or not to use force,
19 correct?

20 MR. WEINER: Objection.

21 Q You can answer.

22 A Yes.

23 Q Okay. And the determination that
24 an officer has to make in regards to the use
25 of force, it's not just how much force used

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Q And that making determinations regarding search and seizure is a part of your daily job function; is that correct?

A Yes.

Q Would you agree with me that as a part of your job functions as a police officer, you are called upon on almost a daily basis to make a determination regarding arrests, correct?

A Yes.

Q Have you ever come to know whether or not you have a duty to intervene as a police officer?

A Can you -- can you restate the question?

Q Sure. Have you ever been taught that you have a duty to intervene as a police officer with respect to conduct of other police officers?

A Yes.

Q Okay. And what is your understanding of that?

A If there's -- if there's an officer doing something wrong or conducting

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2 themselves in a manner that they shouldn't, I
3 should -- I -- I have to -- I have the
4 responsibility to step in.

5 Q You have the responsibility to
6 stop it, correct?

7 A Yes.

8 Q Okay. And that includes a
9 violation of someone's rights, correct?

10 A Yes.

11 Q And where did you learn that?

12 A The Police Academy.

13 Q Now, when you were in the 77, you
14 said that one of your assignments was in
15 anti-crime, correct?

16 A Yes.

17 Q Okay. And is it true that
18 Sergeant Diab was your supervisor in
19 anti-crime?

20 A Yes.

21 Q Okay. How did Sergeant Diab
22 supervise you when you were in anti-crime?

23 MR. WEINER: Objection to
24 the form of the question.

25 You can answer if you

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2 instructor?

3 A Yes.

4 Q And you have a gun -- not a real
5 gun but a gun and you have to make decisions
6 of when to use it?

7 A Yes.

8 Q Now, you testified earlier that
9 as an officer, you don't shoot someone just
10 because they have a gun, correct?

11 MR. WEINER: Objection.

12 A Yes.

13 Q And even if someone was running
14 away with a gun, that's not a reason in and
15 of itself to shoot them, correct?

16 MR. WEINER: Objection.

17 A Yes.

18 Q Is someone bothering you?

19 A Yeah.

20 Q I have to worry about my kids
21 coming in and you have to worry about your
22 people coming in.

23 Do you need a break or you're
24 good?

25 A No, no, no. I'm good.

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2 front of the club. We're a few car lengths
3 back so we could see if anybody is coming or
4 going from the front entrance of the club.

5 Q And did you make any
6 notifications about this plan that you guys
7 were executing?

8 MR. WEINER: Objection.

9 Q You can answer.

10 A Yes, to Sergeant Diab.

11 Q Okay. Did Sergeant Diab make any
12 notifications; to your knowledge?

13 MR. WEINER: Objection.

14 A I don't know.

15 Q Okay. Now, at some point
16 Mr. Benbow and Mr. Bradley left the location,
17 correct?

18 A Yes.

19 Q Okay. Did anything seem unusual
20 to you when they left the location?

21 MR. WEINER: Objection.

22 A No.

23 Q And they walked past your
24 vehicle; is that correct?

25 A No.

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Did he tell you he heard the
commands?

A No.

Q So that's an assumption that
you're making when --

A Yes.

Q -- he went to the ground?

A Yes.

Q And in terms of how you exited
the vehicle, can you describe that to me?

A I exited the driver's side and
went towards the rear of the car.

Q Okay. Did you have your gun out
at that point?

A Yes.

Q Okay. And Officer Diab had his
gun out as well, correct?

A Yes, when he exited his side,
yes.

Q Okay. And Officer Minucci, he
had his gun out?

A Yes.

Q Okay. And at that point
Mr. Benbow, you testified, turned and ran in

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2 the opposite direction, correct?

3 MR. WEINER: Objection.

4 A Yes.

5 Q Did Mr. Benbow pull out a gun and
6 point it at you?

7 A No, not at me.

8 Q Did he pull out a gun and point
9 it at Sergeant Diab?

10 A No.

11 Q Did he pull out a gun and point
12 it at Officer Minucci?

13 A No.

14 Q Your testimony is that he turned
15 around and ran in the opposite direction,
16 correct?

17 A Yes, he was running in the
18 opposite direction.

19 Q You didn't see Mr. Benbow point a
20 gun at anyone that night, correct?

21 A No.

22 Q So that's correct to my answer?

23 A Yes.

24 Q He never presented a gun to you,
25 correct?

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2 A No, he did not.

3 Q What did you do after you got out
4 of the car?

5 A After I got out of the car, I
6 went towards the -- I -- I went towards where
7 Benbow was laying on the ground.

8 Q Okay. At any point in time did
9 you go on the sidewalk?

10 A Yes.

11 Q Okay. At what point in time did
12 you go to the sidewalk?

13 A Probably moments after I went by
14 Benbow.

15 Q Okay. Did you stay in the street
16 that night when you got out of the car
17 initially or at some point did you go onto
18 the sidewalk after the shooting?

19 MR. WEINER: Objection.

20 A I --

21 MR. WEINER: Go ahead.

22 A I was on the street and I was on
23 the sidewalk.

24 Q Okay. Did you get on the
25 sidewalk before or after Mr. Benbow was shot?

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2 Mr. Benbow was shot like the
3 question says.

4 A Probably a car and a half, maybe
5 two car lengths.

6 Q Okay. And did you see Mr. Benbow
7 get shot?

8 A No.

9 Q Did you see Mr. Benbow point a
10 gun at anyone that day?

11 A No.

12 Q What happened after you went over
13 to Mr. Benbow?

14 A After I went over to Mr. Benbow,
15 he was in handcuffs and Sergeant Diab put
16 over a radio transmission requesting a bus
17 and some additional units to the scene.

18 Q Did you say anything to
19 Mr. Benbow?

20 A I do not remember.

21 Q Did he say anything to you?

22 A I heard -- he was on the ground
23 saying "I'm shot."

24 Q Did Officer Rosiello say anything
25 to you?

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2 A No -- I -- I don't remember. I
3 don't remember.

4 Q You don't remember. Did Officer
5 Feeley say anything to you?

6 A I don't remember.

7 Q Did Officer Anderson say anything
8 to you?

9 A I don't remember.

10 Q After they shot Mr. Benbow, did
11 you have any conversation with him about the
12 shooting, either that night or thereafter?

13 A That night, yes.

14 Q Okay. And who did you speak
15 with?

16 A I -- we -- we -- we all spoke.

17 Q Okay. And what -- what was said?

18 A That he had a gun.

19 Q Okay. So after the shooting, you
20 all were there congregating next to
21 Mr. Benbow; is that correct?

22 A No.

23 Q Okay. When did you all have this
24 conversation? Where were you?

25 A A couple of car lengths down

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after the other units got to the scene.

Q Okay. So other units responded to the scene and you're there with the other officers who were there at the time of the shooting a few car lengths down, correct?

A Yes.

Q And you all were talking about what happened and someone told you he had a gun?

A Yes.

Q And Officer Rosiello fired his gun that night at Mr. Benbow, correct?

A Yes.

Q And Officer Feeley fired his gun at Mr. Benbow, correct?

A Yes.

Q Okay. And Officer Anderson did not fire his weapon, correct?

A Yes, he did not fire his gun.

Q And when Officer Rosiello fired his weapon, he was on the sidewalk; is that correct?

A I -- I don't know.

Q Okay. When Officer Feeley fired

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2 Mr. Benbow on the ground, did you see Officer
3 Feeley at any point in the street?

4 A I don't remember.

5 Q Okay. Now, Mr. Benbow was shot
6 as he ran in between two cars; is that
7 correct?

8 A Say that -- say -- say that
9 question again.

10 Q Benbow was shot as he ran in
11 between two cars?

12 A I'm -- I'm -- I wasn't back
13 there. I don't know where he was shot.

14 Q Okay. Did you give any verbal
15 commands that night?

16 MR. WEINER: Objection.

17 A I don't remember.

18 Q And when I say that, I mean in
19 relationship to this incident.

20 Did you give any commands?

21 A I -- I don't remember.

22 Q Okay. Now, did you see
23 Mr. Benbow with a cup in his hand?

24 A Yes.

25 Q Okay. At what point did you see

1 S. A. Mitchell 83

2 Q Were you ever asked to testify in
3 regards to Mr. Benbow?

4 A I honestly do not recall if I did
5 or I didn't.

6 Q Did you meet --

7 A It's been a while.

8 Q Did you meet with any ADAs in
9 regards to Mr. Benbow?

10 A I -- I do not remember if I did
11 or I didn't.

12 Q Are you familiar with the term
13 "blue wall of silence?"

14 A Yes.

15 Q Okay. What is your understanding
16 of what that term means?

17 A It refers to being another police
18 officer -- pretty much protecting other
19 police officers.

20 Q So essentially under the blue
21 wall of silence, police officers cover up for
22 each other, correct?

23 MR. WEINER: Objection.

24 A Yes.

25 Q Did you discharge your firearm

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2 Sergeant Diab had gotten out of the vehicle,
3 correct?

4 A Yes.

5 Q And Officer Minucci was getting
6 out of the vehicle on the rear passenger's
7 side, correct?

8 A Yes.

9 Q Okay. And your testimony is
10 before you even get out of the vehicle, you
11 happen to look back and see him running away
12 and gesture with his hand toward his waist;
13 is that correct?

14 A Yes.

15 Q Okay. Did you see a firearm in
16 his -- in his hand?

17 A No.

18 Q Did you see him pull a gun out of
19 his waist?

20 A No.

21 Q Okay. And he was running away
22 and his hands were pumping in a running
23 motion, correct?

24 A He was running, yes.

25 Q Okay. And after that -- after

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2 you saw him do that running motion away, your
3 testimony is you didn't see anything after
4 that as it relates to the actual shooting,
5 correct?

6 MR. WEINER: Objection.
7 Vague.

8 Q You can answer.

9 MR. WEINER: You can answer
10 if you understand it.

11 A Well, like I said, when he was
12 running towards the -- towards -- was at
13 Bridge, by the time I got out of my vehicle
14 and I started to go towards the rear of where
15 the shooting happened, at that point where I
16 could see where he was -- I could see where
17 he was laying in the -- and it was in the
18 direction where his body was of -- of two
19 vehicles.

20 Q Okay. You could see his body
21 laying in between two vehicles?

22 A No, no, no. His body was not in
23 between two vehicles. I'm saying that's how
24 his body -- when he was in the street -- when
25 he was laying in the street, that's where his